



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

JAN 16 2002

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UICs: 4975.03-03
408.07-00

T:EP:RA:T3

LEGEND:

Taxpayer A:

Taxpayer B:

State C:

IRA X:

Company D:

Dear :

This is in response to the , letter submitted on your behalf by your authorized representative, in which you request several letter rulings under section 408(e) of the Internal Revenue Code. The following facts and representations support your ruling request.

Taxpayer A is married to Taxpayer B. Taxpayers A and B are residents of State C. Taxpayer A maintains IRA X with Company D. Your authorized representative asserts that IRA X meets the requirements of Code section 408(a).

Taxpayers A and B intend to effectuate a post-nuptial agreement. Said agreement will provide for the division of the above-referenced IRA X in the event Taxpayers A and B secure a final judgment of divorce. As of the date of this ruling request, Taxpayers A and B were not contemplating a divorce or legal separation and had no intention of presenting said post-nuptial agreement to a court of competent jurisdiction in order for that court to enter into a decree that incorporates the agreement. Taxpayers A and B intend that their agreement will determine disposition of a portion of their assets, including IRA X, in the event that they either obtain a divorce or a legal separation. The proposed post-nuptial agreement does not provide for any distribution or transfer of

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assets from IRA X prior to their obtaining either a divorce or legal separation, and does not provide for any change of IRA trustee prior to their obtaining either a divorce or legal separation. Furthermore, no distribution, transfer or change of IRA trustee will occur in conjunction with taxpayers' entering into the proposed agreement unless and until Taxpayers A and B obtain a final divorce judgment. Additionally, the proposed agreement requires that its provisions be incorporated in a section 71(b)(2)(A) instrument if such is ever executed by Taxpayers A and B. Finally, the proposed agreement will not be used by Taxpayers A and B for any purpose until, and unless, they obtain a final divorce judgment.

Based on the above facts and representations, Taxpayers A and B, through their authorized representative, request the following letter ruling.

That Taxpayers A and B's entering into the above-referenced post-nuptial agreement will not be considered a prohibited transaction as defined in Code section 4975(c). Furthermore, entering into said post-nuptial agreement will not cause a loss of exemption with respect to IRA X under Code section 408(e)(2)(A), and will not cause IRA X to be treated as having distributed any or all of its assets under Code section 408(e)(2)(B).

With respect to your ruling request, Code section 408 sets down the rules governing individual retirement arrangements (IRAs). Code section 408(d)(1), provides, in short, that a distribution from an IRA shall be taxed to the distributee or payee, as the case may be, in the manner provided under section 72.

Code section 408(d)(6) provides, in summary, that the transfer of an individual's interest in an IRA to his spouse or former spouse pursuant to a divorce or separation decree described in Code section 71(b)(2)(A), shall not be considered a taxable transfer with respect to such individual, and such interest at the time of the transfer shall be treated as an IRA of such spouse and not of such individual. Thereafter, such account for purposes of this subtitle (Subtitle A) is to be treated as maintained for the benefit of such spouse.

Code section 71(b)(2)(A) provides, in general, that a "divorce or separation instrument" means a decree of divorce or separate maintenance or a written instrument incident to such a decree.

Code section 408(e)(1) provides, in relevant part, that an IRA is exempt from tax under this subtitle (Subtitle A) unless such account has ceased to be an individual retirement account by reason of paragraph (2) or (3).

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Code section 408(e)(2)(A) provides, in summary, that if during any taxable year an individual or his beneficiary engages in any transaction prohibited by Code section 4975 with respect to his IRA, such IRA will cease to be an IRA as of the first day of such taxable year.

Code section 408(e)(2)(B) provides, in summary, that in any case in which an IRA ceases to be an IRA pursuant to subparagraph (A), paragraph (1) of subsection (d) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

Code section 4975(c)(1) lists transactions that constitute prohibited transactions.

In this case, the post-nuptial agreement, referenced above, will provide for the division of the above-referenced IRA X in the event Taxpayers A and B secure a final judgment of divorce. Taxpayers A and B intend that their agreement will determine disposition of a portion of their assets, including IRA X, in the event that they either obtain a divorce or a legal separation. The proposed post-nuptial agreement does not provide for either any distribution or transfer of assets from IRA X or any change of IRA trustee prior to their obtaining either a divorce or legal separation. Furthermore, no distribution, transfer or change of IRA trustee will occur in conjunction with taxpayers' entering into the proposed agreement unless and until Taxpayers A and B obtain a final divorce judgment. Thus, entering into the agreement, in and of itself, does not give rise to a distribution as that term is used in Code section 408(d)(1).

With respect to the issue of whether entering into the post-nuptial agreement constitutes a prohibited transaction, within the meaning of Code section 4975(c)(1), with ramifications under Code section 408(e)(2), as noted above, Code section 408(d)(6) provides, in short, that an IRA may be divided pursuant to either a divorce or separation agreement without adverse consequences to the IRA holder. It necessarily follows that if an IRA is divided pursuant to Code section 408(d)(6) said division cannot result in a prohibited transaction. To conclude otherwise would result in there being no distribution within the meaning of Code section 408(d)(1) because of the application of Code section 408(d)(6), but, at the same time, there being a distribution within the meaning of Code section 408(d)(1) pursuant to Code sections 408(e)(2)(A) and (B). Such result would negate Code section 408(d)(6).

In this case, Taxpayers A and B will enter into a post-nuptial agreement which will provide for the division of Taxpayer A's IRA X in case the parties to the agreement obtain either a divorce or legal separation. Said agreement, in and of itself, will have no effect on Taxpayer A's IRA X. If, as noted above, an IRA may be divided pursuant to a divorce or separation agreement described in Code section 71(b)(2)(A) without giving rise to a prohibited transaction, then the mere agreeing to the terms of an agreement that

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divides property, which agreement is intended to comply with Code section 71(b)(2)(A) and which agreement will be presented to a Court of competent jurisdiction and used only if the parties, in the future, obtain either a divorce or legal separation, cannot give rise to a prohibited transaction.

Thus, with respect to your ruling request as a result of Code section 408(d)(6), the Service concludes as follows:

That Taxpayers A and B's entering into the above-referenced post-nuptial agreement will not be considered a prohibited transaction as defined in Code section 4975(c). Furthermore, entering into said post-nuptial agreement will not cause a loss of exemption with respect to IRA X under Code section 408(e)(2)(A), and will not cause IRA X to be treated as having distributed any or all of its assets under Code section 408(e)(2)(B).

This letter ruling deals solely with Taxpayer A and B's entering into the post-nuptial agreement referenced herein. It assumes that if Taxpayers A and B use the agreement, they will, as represented, use the agreement in a manner consistent with the language and requirements of Code section 408(d)(6).

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer that requested it and is based solely on the representations made with respect thereto. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

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Pursuant to a power of attorney on file with the Service, a copy of this letter ruling is being sent to your authorized representative.

Sincerely yours,



Frances V. Sloan
Manager, Employee Plans
Technical Group 3
Tax Exempt and Government
Entities Division

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

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